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No. 5] NEW DELHI, APRIL 29—MAY 5, 2012, SATURDAY/VAISAKHA 9—VAISAKHA 15, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 23 अप्रैल, 2012

आ.अ. 10 .—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, 2009 की निर्वाचन अर्जी संख्या 01 में चण्डीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायालय, के तारीख 8 दिसम्बर, 2011 के निर्णय को एतद्द्वारा प्रकाशित करता है ।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है) ।

[सं. 82/पंजाब-लो.स./(01/2009)/2012]

आदेश से,

शंगारा राम, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 23rd April, 2012

O.N. 10—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment dated 8th December, 2011 of the High Court of Punjab and Haryana at Chandigarh in Election Petition No. 01 of 2009.

In the High Court for the States of Punjab and Haryana at Chandigarh

Election Petition No. 1 of 2009

Paramjit Singh son of Sh. Hardial Singh, resident of Daulatpur Road, Shiv Mandir Dhuri, Tehsil Dhuri, District Sangrur. ....Petitioner

Versus

Vijay Inder Singla, Member Parliament, son of Late Sh. Sant Ram Singla, resident of Near Samania Darwaja, Sai Mohalla, Patiala. Second Address : Vijay Inder Singla, Member Parliament, son of Late Sh. Sant Ram Singla, resident of C/o S. N. Aggarwal Advocate, Railway Road, Near LIC Building, Sangrur. ... Respondents

Petition under Section 80 read with section 81 of the representation of People Act, 1951 read with Section 100 and 101 of the said Act for setting aside and declaring the election of respondent i.e. the returned candidate as void from (12) Sangrur Parliamentary Constituency;

AND/Or;

For issuance of any other order or direction, which this Hon'ble Court may deem fit in the facts and circumstances of the case.

Respectfully Showeth

1. That the petitioner is the resident of Dhuri, District Sangrur. The petitioner is the elector of Sangrur Lok Sabha Constituency and he also filed the nomination for (12) Lok Sabha Constituency Sangrur. So the petitioner being the elector from (12) Sangrur Lok Sabha Constituency is competent to file the present election petition.

2. That through the present election petition, the petitioner is challenging the rejection of his nomination paper, which were arbitrarily rejected by the Deputy Commissioner-cum-Returning Officer without giving an opportunity to rectify the error, which was totally a clerical mistake.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Election Petition No. 1 of 2009

Date of Decision : 8-12-2011

Paramjit Singh ...Petitioner

Versus

Vijay Inder Singla ...Respondent

Coaram :—Hon'ble Mr. Justice Satish Kumar Mittal

Present : Mr. Nandan Jindal, Advocate, for the Petitioner.

Mr. Sudershan Goel, Advocate for the respondent.

Satish Kumar Mittal, J.

Paramjit Singh, a resident of Dhuri, District Sangrur, has filed the instant Election Petition under Section 80 read with Section 81 of the Respresentation of the People Act, 1951 (hereinafter referred to as 'the Act') for setting aside and declaring the election of sole respondent Vijay Kumar Singla from Sangrur Parliamentary constituency as void.

In this petition, election of the respondent has been challenged only on one ground, i.e. under Section 100 (1)(c) of the Act, that the nomination paper of the petitioner was wrongly and improperly rejected by the Returning Officer, without providing him an opportunity to rectify a clerical mistake in his nomination paper. In this case, the Returning Officer rejected the nomination paper of the petitioner on the ground that name of one of the proposers, namely Malkiat Singh, did not find mention in the concerned voter list at serial No. 810, as mentioned by the petitioner in his nomination paper.

It is the case of the petitioner that by mistake, he mentioned the serial number of the aforesaid proposer in the voter list as 810 instead of 804, and this clerical error in his nomination paper could have been got rectified by the Returning Officer at the time of scrutiny. Though the petitioner and his polling agents were very much present at the time of the scrutiny and they had also requested the Returning Officer to rectify the said clerical mistake, but the Returning Officer, without granting them an opportunity to rectify the said mistake, improperly rejected the nomination paper.

In the written statement, the respondent has controverted the aforesaid fact. According to him, neither the petitioner nor his polling agents were present at the time of the scrutiny. The petitioner has made false averment that he made a representation to the Returning Officer for making correction in his nomination paper. It is averred that when at the time of scrutiny, the Returning Officer called the name of the petitioner, no body was there to respond and none was present to rectify the defect in the nomination paper filed by the petitioner. It is further averred that when the Returning Officer did not find the name of one of the proposers at serial number 810 of the voter list, nomination paper of the petitioner was rejected, finding the same not in order in view of first proviso to Section 33 of the Act.

This election petition was filed on June 15, 2009, well within time. Initially, on July 6, 2009, the Registry raised certain objections in filing of the petition. Vide order dated July 28, 2009, counsel for the petitioner was given time to remove the objections in accordance with law. The case was adjourned thrice for the said purpose and ultimately, after removal of all the objections by the petitioner, vide order dated March 22, 2010, notice of this petition was issued to the respondent. On May 12, 2010, when no body was present on behalf of the petitioner, the respondent put in appearance and sought time to file written statement, which was filed within time provided. Thereafter, none remained present on behalf of the petitioner on three consecutive dates, i.e., on August 20, October 01 and November 26, 2010. Accordingly, on November 26, 2010, the following order was passed by this Court :

> "After March 22, 2010, neither the petitioner nor his counsel appeared on May 12, 2010, August 20, 2010 and October 01, 2010. Even today, no body is present on behalf of the petitioner. Learned counsel for the respondent, while placing reliance upon a decision of the Hon'ble Supreme Court in ***Dr. P. Nalla Thampy Thera V. B.L. Shanker and others,*** 1984 (Supp) Supreme Court Cases 631, submits that in such a situation, the election petition should be dismissed in default.
>
> However, in the interest of justice, one more opportunity is granted to the petitioner to pursue this election petition. Registry is directed to issue the actual date notice of this election petition to the petitioner for December 10, 2010. If on that day also, no body appears on his behalf, the submission made by learned counsel for the respondent will be considered."

Thereafter, on December 10, 2010, learned counsel for the petitioner came present and sought time to file replication. However, on January 28, 2011, he submitted

that he does not want to file replication. As such, the case was adjourned to April 08, 2011, for framing of issues. On April 8 and May 13, 2011, the case was adjourned on the joint request of counsel for the parties. On May 18, 2011, none was present on behalf of the petitioner. On May 19, 2011, the issues were framed and the case was adjourned for evidence of the petitioner. Learned counsel for the petitioner was granted one week time to submit the list of witnesses and deposit the diet money. On July 22, 2011, learned counsel for the petitioner stated that the petitioner did not contact him, therefore, neither the list of witnesses could be filed nor the diet money was deposited. No witness was present on behalf of the petitioner. Accordingly, the case was adjourned to September 23, 2011 for evidence of the petitioner and last opportunity was granted to the petitioner to do the needful. On November 11, 2011, the, following order was passed :

> "On May 19, 2011 issues were framed and the case was adjourned for petitioner's evidence. Petitioner was also directed to submit the list of witnesses on the next date i.e. 22-7-2011. Neither any list of witnesses was submitted nor any witness of the petitioner was present. On that date the case was adjourned for 23-9-2011 for evidence of the petitioner and last opportunity was granted to the petitioner to lead evidence. Thereafter on 23-9-2011 the case could not be taken as the Court time was over but it is a fact that by that time the list of witnesses was also not filed. Till date neither any list of witnesses has been filed and even today no witness of the petitioner is present.
>
> Counsel for the petitioner seeks short adjournment.
>
> In the interest of justice, adjourned to 8-12-2011, subject to payment of Rs. 25,000/- as costs to be paid with the High Court Legal Services Committee."

In spite of the said order, the petitioner neither submitted the list of witnesses nor deposited the diet money. Even the costs, imposed on the last date of hearing, were not paid by the petitioner.

Today, learned counsel for the petitioner states that in spite of information given by him to the petitioner, he is not responding to pursue his case. Learned counsel has placed on record copy of a letter dated 22-11-2011, sent by him to the petitioner by registered post, which reads as under :

"To

> Parmjit Singh,
> S/o Sh. Hardyal Singh,
> R/o Daulatpur Road, Shiv Mandir, Dhuri,
> Tehsil Dhuri, Distt. Sangrur.
>
> **IInd Address :**
>
> Paramjit Singh son of Hardial Singh,
> resident of Village Katron,
> Tehsil Dhuri, District Sangrur.

Subject : Regarding information for non-pursuing the case.

This is to inform you that regarding the Election Petition No. 1/2009 titled as "Paramjit Singh Vs. Vijay lnder Singla" pending before the Hon'ble High Court, it was earlier informed to you on 20-4-2011 that you are not pursuing your case and thereafter issues has been framed by the Hon'ble High Court and now the case is fixed for evidence on 22-7-2011 with the further order of submitting the list of witnesses.

The undersigned have already informed to you through letters as well as telephonic information to supply the list of witnesses, however, you failed to comply with the orders/remarks and on seeing your attitude, the Hon'ble High Court was pleased to give last adjournment to you for supplying the list of witnesses on or before 8-12-2011 and witness be produced before the Court on 8-12-2011 itself. But this order was passed by the Hon'ble High Court subject to the payment of depositing cost of Rs. 25000/- failing which your election petition should be dismissed on the next date of hearing.

Therefore come present in the case on the date fixed i.e. On 8-12-2011 along with list of witnesses and the witnesses and with the amount of Rs. 25000/-, for depositing in the Hon'ble High Court.

This is for your information.

Sd/-

(NANDAN JINDAL)

Advocate

Note : 1. Copy of the order dated 11-11-2011 is annexed herewith for your perusal.

2. Copy of the letter is retained in my office for further necessary action and records."

In view of this position, learned counsel for the petitioner states that he is unable to assist this Court and prosecute this petition on behalf of the petitioner.

In the aforesaid situation, learned counsel for the respondent prays that this petition be dismissed for non-prosecution, as in such like situation, the Court is left with no other option, except to dismiss the case for non-prosecution, in exercise of its inherent powers and under Order IX of the Code of Civil Procedure, which, in view of Section 87 of the Act, is applicable in these proceedings. In this regard, learned counsel for the respondent has relied upon a decision of the Hon'ble Supreme Court in ***Dr. . P. Nalla Thamp Thera Versus B.L. Shanker and others.*** 1984 (Supp) Supreme Court Cases 631 and the Full Bench decision of this Court in ***Jugal Kishore Versus Doctor Baldev Parkash.*** AIR 1968 Punjab & Haryana 152.

Learned counsel for the petitioner neither opposed the prayer of the respondent nor could cite any contrary decision. However, with the assistance of learned counsel

for the parties, I have considered the prayer made by learned counsel for the respondent.

Under Chapter IV of Part VI of the Act, various provisions have been made for withdrawal and abatement of the election petitions. Section 109 of the Act provides that an election petition may be withdrawn only by leave of the High Court. When such an application is made, the Court is required to issue notice of the same to all other parties to the petition and to publish the same in the Official Gazette. Section 110 further provides procedure for withdrawal of the election petitions. Sub-section (1) provides that if there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners. Sub-section (2) provides that no application for withdrawal shall can be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed. Sub-section (3) provides that if the prayer made in such application is granted, the petitioner has to pay the costs to the respondent, incurred by him. It is further required that notice of withdrawal of election petition is to be published in the Official Gazette; and after the notice, within fourteen days, a person who might himself have been a petitioner may apply to be substituted as petitioner in place of the party withdrawing the petition, and he can be permitted by the Court to continue the proceedings upon such terms and conditions as the High Court may deem fit. Section 111 of the Act further requires that a report of withdrawal of election petition be communicated to the Election Commission. Section 112 relates to abatement of election petitions. Sub section (1) provides that an election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners. Sub-section (2) further provides that where an election petition abates under sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit. Sub-section (3) provides that any person who might himself have been a petitioner may, within fourteen days of such publication, apply to the court for his substitution as a petitioner and he is permitted to be substituted as a petitioner, he shall be entitled to continue with the proceedings. Section 116 of the Act provides for abatement or substitution on death of respondent. It provides that if before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person, who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit.

The aforesaid provisions have been made for the purpose to ensure that if the petitioner chooses to withdraw the election petition, even a person who might have been a petitioner shall be entitled to be substituted as petitioner, so as to prosecute the petition. The basis for these special provisions is found in well established principle that an election petition is not a matter in which the only persons interested are the candidates who strove against each other at the elections. The public of the constituency is also substantially interested in it. Thus, these provisions show that the petitioner in the election petition has not been given a liberty to withdraw the election petition as a matter of right. In certain circumstances, as mentioned in sub-section (2) of Section 110 of the Act, he cannot be permitted, at all, to withdraw the election petition and in the other circumstances, discretion has been given to the court to allow the prayer of the petitioner to withdraw the petition, subject to giving opportunity to the other persons to substitute themselves as petitioner. However, there is nothing in the entire Act providing or indicating that a similar procedure is to be followed in the event of a petitioner failing to prosecute the petition. Such failure can be due to various causes. No provision has been made in the Act to deal with a situation where the petitioner does not have any interest to prosecute the election petition. In such a situation, the question is as to whether the court has power to dismiss the Election Petition for non prosecution, in exercise of inherent powers and or by invoking the procedure of the Code of Civil Procedure. Precisely, this question was considered by the Full Bench of this Court in ***Jugal Kishore's case*** (supra), and it was held as under :

> "There is nothing in the entire Act providing or indicating that a similar procedure is to be followed in the event of a petitioner failing to prosecute the petition. Such failure can be due to various causes. The petitioner can by force of circumstances, be genuinely rendered helpless to prosecute the petition. For instance, he may find that his financial condition has suddenly worsened and that he can no longer afford the expenses of litigation. He may even, owing to exigencies of business or vocation or profession, have to go to such a distant place from the seat of the High Court where the election petition is being tried that he may find it impossible to prosecute the petition in a proper manner. There would be two courses open to him and that will depend entirely on his volition. He can either file an application for withdrawal of the petition disclosing the circumstances which have brought about such a situation in which case there would be no difficulty in following the procedure laid down in Sections 109 and 110 of the Act, or he may choose to simply absent himself from the Court or cease to give any instructions to the counsel engaged by him or fail to deposit the process-fee and the diet-money for witnesses or take the necessary steps for summoning

the witnesses in which case the Court will have no option but to dismiss the election petition under the provisions of the Code of Civil Procedure which would be applicable to the election petitions in the absence of any express provisions in the Act. The dismissal will have to be under the provisions contained in Order 9 or Order 17 of the Code." (Emphasis added)

Grover, J., while concurring with the judgment, has further observed as under :—

"But there is no provision whatsoever by which a respondent who might have been a petitioner can be compelled or forced by the the Court to prosecute the petition or adduce evidence in support of it owing to the default of the original petitioner and on his refusal to do so notice of such event can be published in the Official Gazette to enable some one, who might have been a petitioner, to apply and get substituted and then prosecute the petition. Nor can the Court give any decision on the merits worth the name in a petition which is not being prosecuted in the absence of any evidence which might have been adduced by the parties. It is difficult to believe that the Legislature intended that the Court in such circumstances should embark suo motu on an enquiry which it will be impossible to successfully complete unless some one is ore-pared to provide the material and the evidence and incur the expense."

The observations made in the aforesaid judgment, particularly the judgment of Grover, J., were approved by the Hon'ble Supreme Court in ***Rajendra Kumari Bajpai V. Ram Adhar Yadav.*** (1975) 2 SCC 447, where it was observed that we fully approve the line of reasoning adopted by the High Court in that case. It, therefore, follows that the Code is applicable in disposing of an election petition when the election petitioner does not appear or take steps to prosecute the election petition. Dismissal of an election petition for default of appearance of the petitioner under the provisions of either Order IX or Order XVII of the Code would, therefore, be valid and would not be open to challenge on the ground that these provisions providing for dismissal of the election petition for default do not apply.

This question again came for consideration before the Hon'ble Supreme Court in ***Dr. P. Nalla ThampyThera's case*** (supra). In that case, the trial commenced in the election petition and the petitioner sought an adjournment. Since the trial had already taken much time, the High Court granted last opportunity to the petitioner, in view of the statutory mandate, to dispose of the election petition within six months. When the petitioner once again asked for a further adjournment, the Court rejected the same and dismissed the election petition. Thereafter, respondent No. 19 in the election petition made an application before the High Court for restoration of the petition and for permission to be substituted for continuing the petition. The High Court rejected the application. The Hon'ble Supreme Court, while dismissing the Civil Appeal, observed as under :

"There is no support in the statute for the contention of the appellant that an election petition cannot be dismissed for default. The appellant contended that default of appearance or non-prosecution of the election petition must be treated as on par with withdrawal or abatement and, therefore, though there is no clear provision in the Act, the same principle should govern and the obligation to notify as provided in Section 110 or 116 of the Act should be made applicable. We see no justification to accept such a contention. Non-prosecution or abandonment is certainly not withdrawal. Withdrawal is a positive and voluntary act while non-prosecution or abandonment may not necessarily be an act of volition. It may spring from negligence, indifference, inaction or even incapacity or inability to prosecute. In the case of withdrawal steps are envisaged to be taken before the Court in accordance with the prescribed procedure. In the case of non-prosecution or abandonment, the election petitioner does not appear before the Court and obtain any orders. We have already indicated that the Act is a self-contained statute strictly laying down its own procedure and nothing can be read in it which is not there nor can its provisions be enlarged or extended by analogy: In fact, the terms of Section 87 of the Act clearly prescribe that if there be no provision in the Act to the contrary, the provisions of the Code would apply and that would include Order 9, Rule 8 of the Code, under which an election petition would be liable to be dismissed if the election petitioner does not appear to prosecute the election petition."

It was further observed that an application for restoration of the election petition could only be filed by the election petitioner and not by the respondent, as the language of Rule 9 of the Code of Civil Procedure clearly provides that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit but he may apply for an order to set aside the dismissal. Under this Rule, therefore, an application for restoration can be made only by the petitioner. Since it is a provision for restoration, it is logical that the provision should be applicable only when the party on account of whose default in appearance the petition was dismissed, makes an application to revive the petition to its former stage prior to dismissal. In that case, the application for restoration filed by respondent No.19 was dismissed. The said respondent raised the contention that the statutory scheme authorises an elector at whose instance an election petition could have been filed to get substituted in the event of withdrawal or abatement. On that analogy, he

urged that a petition for restoration would also lie at the instance of a respondent. This contention was rejected by the Apex Court while observing that the ambit of the provisions relating to withdrawal and abatement cannot be extended to meet other situations. Specific provisions have been made in the Act to deal with the two situations of withdrawal and abatement and a person hitherto not a party or one of the respondents who was entitled to file an election petition has been permitted to substitute himself in the election petition and to pursue the same in accordance with law. These provisions cannot be extended to an application under Order IX Rule 9 of the Code of Civil Procedure and at the instance of a respondent or any other elector, a dismissed election petition cannot be restored.

When the Legislation has not provided for a situation, where the petitioner fails to prosecute the petition, in my opinion, the Court cannot further proceed with the matter, particularly when there is no person to adduce evidence in support of the petition. It is true, as has been observed by the Hon'ble Full Bench, that in certain circumstances, even if the petitioner fails to prosecute his petition, the Court may be in a position to proceed with its trial if there is any respondent who is prepared to continue it and get himself either transposed to the array of petitioners or adduce evidence in support of the petition. But in the present case, there is no such respondent, because in the present case there is only one respondent against whom the election petition has been filed and he is not prepared to prosecute the petition. In such a situation, the court by invoking its inherent power or provisions of the Code of Civil Procedure is fully empowered to dismiss the petition for non-prosecution.

In view of Section 87 of the Act, the provisions of the Code of Civil Procedure are applicable on the election petition. Though the Act does not give any power of dismissal of the election petition for non-prosecution, but no Court or Tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared and not cared to remain present to lead evidence. In such situation, the only option left with the court is to dismiss the election petition under the Code of Civil Procedure.

In the present case, in spite of several opportunities granted, as mentioned in the earlier part of the judgment, the petitioner neither filed the list of witnesses nor deposited the diet money. When in spite of sufficient opportunities granted to the petitioner, he has not done the needful, then it is apparent that he is not interested to prosecute his petition. In the absence of any evidence, the Court is not in a position to proceed with the case further and decide the same on merit. Section 87 of the Act provides for the procedure to be followed by the High Court, while trying the election petition. It lays down that subject to the provisions of this Act and any of the rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Order XVII Rule 3 of the Code of Civil Procedure provides that where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, (a) if the parties are present, proceed to decide the suit forthwith, or (b) if the parties are, or any of them is, absent, proceed under Rule 2. Order XVII Rule 2 provides that where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

In the present case, this Court, in absence of any evidence at all, is not in a position to proceed to decide the petition. Neither the petitioner nor his witnesses are present. By not filing the list of witnesses and the diet money, the petitioner has chosen not to prosecute the case. In such circumstances, this Court is left with no other option, but to dismiss this election petition for non-prosecution under Order IX of the Code of Civil Procedure.

Ordered accordingly.

December 08, 2011

Sd./-

(SATISH KUMAR MITTAL) Judge

[No. 82/PB–HP/(01/2009)/2012]

By Order,

SHANGARA RAM, Principal Secy.

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